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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 ANTHONY EUGENE LEWIS,) CASE NO. C08-1201-JCC-MAT
08 Plaintiff,)
09 v.) ORDER RE: PLAINTIFF'S MOTION
10 KING COUNTY,) TO COMPEL AND ENLARGE
11 Defendant.) DISCOVERY
12 _____)

13 Plaintiff, proceeding *pro se* and *in forma pauperis* in this 42 U.S.C. § 1983 civil rights
14 case, alleges violation of his constitutional rights through his prosecution for drug possession.
15 His Amended Complaint appears to allege that defendant King County maliciously prosecuted
16 him and denied him compulsory process. (Dkt. 7.) Plaintiff now seeks to compel defendant
17 to produce his criminal case file and to enlarge the period for discovery in order to allow
18 re-service and response to interrogatories propounded on King County Prosecutor Gabrielle
19 Dickerman. (Dkt. 26.)

20 Defendant opposes plaintiff's motion. (Dkt. 28.) Defendant notes that plaintiff has
21 been instructed on the procedure to obtain a copy of his court file from King County Superior
22 Court and that portions of the file were produced in response to requests for production. (*See*

01 Dkt. 29.) Defendant asserts that it properly objected to the interrogatories at issue given that
02 prosecutor Dickerman is not a named defendant in this action, *see* Fed. R. Civ. P. 33(a)(1)
03 (permitting interrogatories to be served on “any other party”), and that plaintiff has failed to
04 show good cause for extending the discovery deadline, *see* Fed. R. Civ. P. 6(b)(1) (allowing
05 extensions of time for good cause shown). Defendant further avers that, to the extent
06 plaintiff’s motion contains new discovery requests, such requests are untimely given the March
07 23, 2009 discovery deadline (*see* Dkt. 15), and that plaintiff failed to comply with the meet and
08 confer requirements associated with his motion to compel, *see* Fed. R. Civ. P. 37(a)(1) (a party
09 filing a motion to compel “must include a certification that the movant has in good faith
10 conferred or attempted to confer with the person or party failing to make disclosure or
11 discovery in an effort to obtain it without court action.”)

12 In reply, plaintiff notes that his indigent status inhibits his ability to obtain a copy of his
13 court file through King County Superior Court and asserts that he attempted to confer with
14 defendants regarding this discovery issue prior to filing his motion. He contends that the
15 requested discovery is relevant to the pending action and does not impose any undue burden or
16 expense. *See* Fed. R. Civ. P. 26(b)(1) (“For good cause, the court may order discovery of any
17 matter relevant to the subject matter involved in the action.”) Plaintiff maintains that good
18 cause exists for extending the discovery deadline in this matter given that he previously
19 propounded the discovery requests at issue on defendant and because he provided defendant
20 with the opportunity to meet and confer regarding the requests.

21 Plaintiff’s initial motion did not contain the required Rule 37(a)(1) certification that he
22 conferred or attempted to confer with defendant before filing his motion to compel. Plaintiff

01 did, however, attest in his reply that he attempted to confer with defendant before filing his
02 motion. Defendant denies this contention. (Dkt. 29, ¶ 4.) Giving plaintiff the benefit of the
03 doubt, the Court will address his motion to compel.

04 The Court first addresses plaintiff's motion as it relates to his criminal case file.
05 Plaintiff timely made this discovery request of defendant in October 2008. (Dkt. 29, Ex. 1.)
06 Defendant replied to the request in the form of a letter, stating plaintiff previously submitted a
07 request for the case file to King County Superior Court and had been informed of the procedure
08 for obtaining the documents from that source. (*Id.*) The attached letter from King County
09 Superior Court reflects that satisfaction of the request required a minimum fee of \$10.00, with
10 additional fees for charges beyond that amount billed on a \$20.00 per hour basis. (*Id.*)

11 The Court finds defendant's response to plaintiff's discovery request inadequate at best.
12 Rule 34 allows a party to serve on any other party a request "to produce and permit the
13 requesting party or its representatives to inspect [or] copy. . . [documents] in the responding
14 party's possession, custody, or control." Fed. R. Civ. P. 34(a)(1). Pursuant to Rule 34(b)(2),
15 defendant was required to "either state that inspection and related activities will be permitted as
16 requested or state an objection to the request, including the reasons." Defendant did not raise
17 any objections to the request or provide plaintiff – an incarcerated individual proceeding *pro se*
18 and *in forma pauperis* in this matter – with any meaningful opportunity to inspect and/or copy
19 the documents at issue.¹ Nor did defendant's response to plaintiff's motion to compel include

21 ¹ The Court acknowledges that plaintiff's request could be deemed deficient pursuant to
22 Rule 34(b)(1)(B), which requires a discovery request to "specify a reasonable time, place, and
manner for inspection[.]" However, the fact that plaintiff is currently incarcerated and his *pro se*
status mitigate this deficiency.

01 any objections as to the content of the request or an assertion that compliance with plaintiff's
02 request would impose an undue burden or expense. *See* Fed. R. Civ. P. 26(c) (the Court must
03 limit discovery upon a determination that "the discovery sought is unreasonably cumulative or
04 duplicative, or can be obtained from some other source that is more convenient, less
05 burdensome, or less expensive[.]" or that "the burden or expense of the proposed discovery
06 outweighs its likely benefit[.]") At most, defendant indicated that some of the documents had
07 been provided and that the documents could be obtained from another source for a fee.

08 Given all of the above, the Court finds merit in plaintiff's motion to the extent it relates
09 to his criminal case file. Defendant is accordingly compelled to either provide copies of the
10 documents requested or to provide plaintiff with a meaningful opportunity to inspect and copy
11 those documents. Defendant may exclude copies of documents already provided in response
12 to other discovery requests.

13 The Court next addresses plaintiff's request to enlarge the period for discovery in order
14 to allow re-service and response to interrogatories propounded on prosecutor Dickerman.
15 Plaintiff submitted these interrogatories pursuant to Rule 33, which allows service of
16 interrogatories on any party in an action. Fed. R. Civ. P. 33(a)(1). As noted by defendant,
17 Dickerman is not a party to this action. Plaintiff fails to show good cause for extending the
18 discovery deadline to allow this particular discovery. *See* Fed. R. Civ. P. 6(b)(1).²

19 In sum, plaintiff's request for an order compelling discovery and enlarging the time for
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21 ² Plaintiff also asserts in his reply that discovery should be extended given his desire to
22 name additional defendants in this matter. This assertion is rejected. Although plaintiff is
attempting to appeal the Court's ruling, it remains that the Court denied his motion to file a
second amended complaint naming these additional defendants. (Dkt. 25.)

01 completion of discovery (Dkt. 26) is GRANTED in part and DENIED in part for the reasons
02 described above. The discovery deadline in this matter is hereby extended to **May 22, 2009**
03 for the discrete purpose of allowing the completion of discovery regarding plaintiff's criminal
04 case file, and the dispositive motion deadline is extended to **June 22, 2009**. The Clerk is
05 directed to send copies of this Order to the parties and to the Honorable John C. Coughenour.

06 DATED this 17th day of April, 2009.

07 s/ Mary Alice Theiler
08 United States Magistrate Judge
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